

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
NRS Enterprises, Inc.)	File No. EB-02-AT-329
Owner of unregistered Antenna Structure located at)	
35° 20' 36" North Latitude by 86° 12' 00" West)	NAL/Acct. No. 200332480004
Longitude in Tullahoma, Tennessee)	
)	FRN 0000-0394-46

FORFEITURE ORDER

Adopted: March 25, 2004

Released: March 29, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to NRS Enterprises, Inc. ("NRS"), licensee of AM broadcast station WJIG, Tullahoma, Tennessee, for willful and repeated violations of Section 17.4 (a) of the Commission's Rules ("Rules").¹ The noted violation involves NRS's failure to register its antenna structure.

2. On November 5, 2002, the Commission's Atlanta, Georgia, Field Office ("Atlanta Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to NRS for a forfeiture in the amount of three thousand dollars (\$3,000).² NRS filed its response to the NAL on December 5, 2002.

II. BACKGROUND

3. On April 7, 1999, an agent from the Atlanta Office inspected WJIG's antenna structure, which NRS owns. The agent determined by checking the Commission's Antenna Structure Registration ("ASR") data base that the tower was unregistered. On April 9, 1999, the Atlanta office issued a Notice of Violation ("NOV") to NRS for having an unregistered tower. In response to the NOV, NRS stated that it had submitted an antenna structure registration form and would display the registration number near the tower.

4. On July 29, 2002, the Atlanta Office received a report indicating that WJIG's antenna structure was not illuminated. An agent at the Atlanta Office checked the ASR data base and determined that there was no registered antenna structure within two miles of the location of WJIG's tower -- 35° 20' 36" North Latitude by 86° 12' 00" West Latitude.

¹ 47 C.F.R. § 17.4 (a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480004 (Enf. Bur., Atlanta Office, released November 5, 2002).

5. On August 25, 2002, an agent from the Atlanta Office again inspected WJIG's antenna structure. The agent found that the tower lighting was in operation but station personnel could not produce an antenna structure registration certificate. On September 27, 2002, the Atlanta Office received by facsimile a copy of the registration form which NRS said it sent to the FCC in April 1999.

6. On November 5, 2002, an agent at the Atlanta Office again checked the Commission's ASR data base and found that WJIG's tower was unregistered.

7. On November 5, 2002, the Atlanta Office issued a *NAL* for a forfeiture in the amount of \$3,000 to NRS for willful and repeated violation of Section 17.4(a) of the Rules. NRS responded to the *NAL* on December 5, 2002, seeking cancellation or reduction of the proposed monetary forfeiture. NRS states that the general manager who submitted the response to the *NOV* in 1999 resigned during 2001 and that NRS is unable to determine why it did not complete the registration of WJIG's tower but finds it "difficult to accept" that the failure to register WJIG's tower was willful. NRS further states that its current management took steps to register the tower as soon as it became aware of the problem and that the antenna structure is now registered. However, NRS does not provide a registration number. Finally, NRS states that it is a not for profit organization and that payment of the proposed forfeiture would "have a dramatic impact on the operation funds for the station." To support its financial hardship claim, NRS provides copies of its 1999, 2000 and 2001 federal income tax returns as well as profit and loss statements covering a three year period.

III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that, in examining NRS's response, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

9. Section 17.4(a) of the Rules required the owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures no later than July 1, 1998. WJIG's tower was subject to this requirement.⁶ On the basis of the FCC investigation and NRS's response, we find that NRS violated Section 17.4(a) by failing to register its antenna structure. Despite NRS's claim that it registered WJIG's tower, the Commission's ASR data base indicates that, as

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ The Commission's TOWPUB tower data base indicates that WJIG's tower was assigned painting or lighting requirements before July 1, 1996.

of the adoption date of this order, WJIG's tower remains unregistered.⁷ In view of the continuation of the violation of Section 17.4(a) after the issuance of an *NOV*,⁸ we conclude that it was willful⁹ and repeated.¹⁰

10. In support of its financial hardship claim, NRS submits copies of its 1999, 2000 and 2001 federal income tax returns and profit and loss statements covering a three year period. The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹¹ After reviewing the financial data submitted, we find that the monetary forfeiture amount should not be reduced on the basis of financial hardship.¹²

11. We have examined NRS's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that NRS willfully and repeatedly violated Section 17.4 (a) of the Rules. We find that there is no basis for cancellation or reduction of the proposed monetary forfeiture.

12. Because WJIG's antenna structure remains unregistered as of the adoption date of this order, we will require, pursuant to Section 308(b) of the Act,¹³ that NRS report to the Enforcement Bureau

⁷ Even had NRS taken remedial measures to correct the registration violation, no mitigation would be warranted on that basis. The Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations." See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

⁸ Although NRS no longer employs the general manager who was in charge at the time of the issuance of the *NOV*, NRS is responsible for his actions. "[T]he Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations." *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹¹ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹² *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹³ 47 U.S.C. § 308(b)

within thirty (30) days of the release of this *Order* whether it has achieved compliance with Section 17.4(a) of the Rules. If the report indicates that NRS has registered WJIG's antenna structure, NRS must provide the registration number. NRS's report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If NRS fails to submit such a report or we find that NRS has not come into compliance with Section 17.4(a), we will consider further appropriate enforcement action.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ **NRS IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for willful and repeated violation of Section 17.4(a) of the Rules.

14. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, NRS must submit the report described in Paragraph 12, above, within 30 days from the release of this *Order*, to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A 820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332480004 and FRN 0000-0394-46. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

16. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to NRS Enterprises, Inc., 607 E. Carroll Street, Tullahoma, Tennessee 37388.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.